

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII
3 SYNAGRO TECHNOLOGIES,)
4 INC.,)
5 Plaintiff,)
6 vs.) CIVIL NO.
7 GMP HAWAII, INC.,) CV04-00509 SPK LEK
8 Defendant.)
9 _____)

10
11 DEPOSITION OF WAGDY A. GUIRGUIS, P.E.
12

13 Taken on behalf of Plaintiff SYNAGRO TECHNOLOGIES,
14 INC., at the offices of Alston Hunt Floyd & Ing, ASB
15 Tower, 1001 Bishop Street, 18th Floor, Honolulu,
16 Hawaii, commencing at 9:04 a.m., Monday, September 19,
17 2005, pursuant to Notice.
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24 BEFORE: ELSIE TERADA, CSR NO. 437
25 Certified Shorthand Reporter

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(808) 524-2090

EXHIBIT M

1 APPEARANCES:

2

3 For Plaintiff SYNAGRO TECHNOLOGIES, INC.:

4 MEI-FEI KUO, ESQ.
5 Alston Hunt Floyd & Ing
6 American Savings Bank Tower
7 1001 Bishop Street, 18th Floor
8 Honolulu, Hawaii 96813
9 (808) 524-1800

10 For Defendant GMP HAWAII, INC.:

11 RICHARD C. SUTTON, JR., ESQ.
12 Sakai Iwanaga Sutton Law Group
13 City Financial Tower, Suite 2307
14 201 Merchant Street
15 Honolulu, Hawaii 96813-2929
16 (808) 792-3888

17 ALSO PRESENT:

18 DANIEL HABIB, ESQ.

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1 Q Okay. And so the inclusion of -- and have
2 you had a chance yet to read Exhibit 15?

3 A Uh-huh.

4 Q Exhibit 15 is an accurate copy of Change
5 Order 1. Have you seen this document before today?

6 A Long time ago, but I have seen it, yes.

7 Q Okay. I want to take your attention to the
8 attachment that's on GMP - 184. Do you see the
9 reference here to 200,000, and it says, "Additional
10 construction management services by GMP"? Right here
11 (indicating).

12 A Yes.

13 Q Okay. This insertion here, who had put that
14 in? At whose request was that included in this change
15 order?

16 A I have no idea, but this internal work by
17 Synagro.

18 Q Okay. How did they arrive at the \$200,000
19 amount?

20 A From my recollection, they had 4-, 500,000
21 available initially, to start with. Was how much?
22 600,000.

23 MR. SUTTON: (Indicating.)

24 THE WITNESS: Construction management.

25 MR. SUTTON: Yes.

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1 THE WITNESS: 600,000.

2 MR. SUTTON: 6460.

3 THE WITNESS: 646- initially.

4 MS. KUO: Uh-huh.

5 THE WITNESS: And we said that's not enough
6 because our fee proposal was much higher than that, so
7 they added 200,000 more.

8 Q (BY MS. KUO): Okay. And so that's how that
9 figure, your understanding?

10 A Yeah.

11 Q So this document here, this change order,
12 this is not a final document. It still needs to be
13 approved by the City; correct?

14 A That is correct.

15 Q And do you have any understanding of whether
16 or not this additional amount for 200,000 for
17 construction management was ever approved by the city?

18 A I have no idea.

19 Q Okay. I want to show you Exhibit 16 to Peter
20 Melnyk's deposition.

21 A Uh-huh.

22 Q And if you look at, this is an e-mail, a
23 June 5th e-mail from the city, Steven Serikaku, to
24 Connie Reynolds and Jim Hecht of Synagro. And if you
25 go down towards the middle, it states, "We also provide

1 the following comments: The \$200,000 cost for
2 additional management shall be deleted."

3 Do you see that?

4 A Yes.

5 Q So, did you ever receive any type of
6 appropriation from the city to provide construction
7 management work?

8 A We don't work for the city. We don't work
9 for the city. We work for Synagro.

10 Q Okay. Did you ever receive any type of -- on
11 construction management, what were the terms that were
12 discussed between Synagro and GMP?

13 A We have submitted our fee proposal, was an
14 excess of 700,000.

15 Q Let me show you Exhibit No. 5. Is this what
16 you are calling your, quote-unquote, fee proposal?

17 MR. SUTTON: Exhibit 5 is document GMP - 0176.

18 THE WITNESS: "Yes, and that's the portion of the
19 construction management, if you add the 400- plus the
20 300-, that comes to over the 700,000.

21 Q (BY MS. KUO): Okay. I want to show you
22 here, though, it says: Peter Melnyk asked me to e-mail
23 you the following regarding your engineering fee
24 proposal. And later on down here, it says: Under
25 construction management GMP proposes.

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1 upon one thing -- I mean, I'm still confused, based on
2 the presentations and the work?

3 A Based on the representation of Synagro that
4 GMP is the engineer for the team.

5 Q Okay. I also wanted to -- hold on a second.
6 I'd like to next go to the compensation issue. You
7 have here, the total design expenses is approximately
8 2,683,422 for the said contract. You're talking about
9 the implied contract, right?

10 MR. SUTTON: Which contract?

11 MS. KUO: Well, I'm going by the counterclaim. He
12 says the total of the design expenses is approximately
13 2,683,422 for the said contract.

14 Q (BY MS. KUO): What contract are you
15 referring to? Right here.

16 A That's number what?

17 Q No. 1, Paragraph 12 of the counterclaim
18 that's attached as Exhibit 3 to Melnyk's depo.

19 MR. SUTTON: You're answering her question on
20 Paragraph 12, as to what contract this is.

21 THE WITNESS: From what I see right now, it
22 appears to be the implied contract.

23 Q (BY MS. KUO): Okay. And what is this figure
24 based on, the 2 million six hundred eighty-three?

25 A Yeah. Based on what they negotiated.

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1 Q So all of these figures are based on industry
2 standards?

3 A That is correct.

4 Q Just two more things I want to cover with the
5 claim and then you can go. We can come back and
6 continue in the afternoon.

7 A Sure.

8 Q You have in here, on Paragraph 14, that: As
9 a result, Defendant is entitled to damages including
10 profits from the contract plus costs.

11 What are you talking about profits?

12 A Profits of the engineering and the
13 construction management.

14 Q So it's basically these figures here?

15 A That is correct.

16 Q Not an additional profit, right?

17 A That's the profit for this project.

18 Q And the last thing was, you also have a
19 Count II here, for punitive damage, what's the basis pf
20 this claim here?

21 A Where is that? I think this is a legal --

22 MR. SUTTON: You can give the factual basis for
23 it.

24 THE WITNESS: So what's the question?

25 Q (BY MS. KUO): My question is, what's the

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1 C E R T I F I C A T E

2 STATE OF HAWAII)
3 CITY AND COUNTY OF HONOLULU) SS.

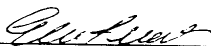
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5 I, ELSIE TERADA, do hereby certify;

6 That on September 19, 2005, at 9:04 a.m.
7 appeared before me WAGDY A. GUIRGUIS, P.E., the witness
8 whose deposition is contained herein; that prior to
9 being examined he was by me duly sworn;

10 That the deposition was taken down by me in
11 machine shorthand and was thereafter reduced to
12 typewritten form under my supervision; that the
13 foregoing represents, to the best of my ability, a true
14 and correct transcript of the proceedings had in the
15 foregoing matter.

16 I further certify that I am not attorney
17 for any of the parties hereto, nor in any way concerned
18 with the cause.

19 DATED this 30th day of September, 2005, in
20 Honolulu, Hawaii.

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24 ELSIE TERADA, CSR NO. 437
25 Notary Public, State of Hawaii
My Commission Expires: 4-07-2006

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